

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:17CR20
(STAMP)

DR. ROLAND F. CHALIFOUX, JR.,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

The defendant was named in a 32-count indictment in the above-styled criminal action. Counts One - Eleven and Twenty-Three - Twenty-Six of the indictment charge the defendant with healthcare fraud. Counts Twelve - Eighteen charge the defendant with mail fraud. Counts Nineteen - Twenty-Two charge the defendant with wire fraud. Counts Twenty-Seven, Twenty-Eight, Thirty, and Thirty-Two charge the defendant with distribution of oxycodone. Counts Twenty-Nine and Thirty-One charge the defendant with distribution of methadone. The indictment also contains a forfeiture allegation. Counts Twenty-Seven - Thirty-Two were dismissed on July 25, 2017, pursuant to a motion by the government. Counsel for the defendant has filed a motion to dismiss the indictment or, in the alternative, to suppress evidence obtained from the Yahoo search warrant (ECF No. 31).

United States Magistrate Judge James E. Seibert held a hearing on the motion to dismiss the indictment or, in the alternative, to suppress evidence obtained from the Yahoo search warrant on March 14, 2018. The magistrate judge then entered a report and recommendation recommending that the motion be denied as moot without prejudice. ECF No. 43. Neither party filed objections to the report and recommendation.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. Because no objections were filed, all findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). As the Supreme Court of the United States stated in United States v. United States Gypsum Co., "a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." 333 U.S. 364, 395 (1948).

III. Discussion

This Court finds no clear error in the magistrate judge's determination that the defendant's motion to dismiss the indictment or, in the alternative, to suppress evidence obtained from the Yahoo search warrant should be denied as moot without prejudice.

At the hearing on the motion, counsel for the defendant advised the magistrate judge that the government recently turned over to them about 12,000 emails that they need to review before they can adequately argue their motion. Thus, counsel for the defendant requested additional time to review the emails. The magistrate judge agreed that the request for additional time was reasonable and provided the defendant with a new deadline for filing a motion relating to the Yahoo search warrant.

After reviewing the report and recommendation under the clearly erroneous standard of review, this Court is not left with a "definite and firm conviction that a mistake has been committed." United States Gypsum Co., 333 U.S. at 395. Accordingly, the magistrate judge's report and recommendation is affirmed and adopted.

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 43) is AFFIRMED AND ADOPTED. Therefore, the defendant's motion to dismiss the indictment or, in the alternative, to suppress evidence obtained from the Yahoo search warrant (ECF No. 31) is hereby DENIED AS MOOT WITHOUT PREJUDICE. Additionally, because no party filed objections to the report and recommendation, the parties have waived their right to appeal a judgment of this Court based thereon. Thomas v. Arn, 474 U.S. 140, 148-53 (1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit copies of this memorandum opinion and order to counsel of record herein, to the defendant, to the United States Probation Office, and to the United States Marshals Service.

DATED: April 25, 2018

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE